



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,976	02/09/2004	Wayne Belcher	20108/0200867-US0	9594
7278	7590	09/19/2007	EXAMINER	
DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			LUK, EMMANUEL S	
		ART UNIT	PAPER NUMBER	
		1722		
		MAIL DATE	DELIVERY MODE	
		09/19/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/774,976	BELCHER, WAYNE	
	Examiner	Art Unit	
	Emmanuel S. Luk	1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 24 August 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-8,10,11,13 and 15-23 is/are pending in the application.
- 4a) Of the above claim(s) 18-20 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-8,10,11,13,15-17 and 21-23 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1, 4, 8, 16, 17, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Julien (6293020).

Julien teaches a tool having a handle with substantially planar configuration (42) with an elongated applicator portion (34) that is fixed at one end with the handle and transitioning linearly outward along a longitudinal axis of the handle and applicator portion (Fig.1, Fig. 2), and further transitioning toward a single free end tip (52) and decreases from the longitudinal axis towards lateral edges of the applicator portion (Fig.

1, Fig. 2, Fig. 3), the external surface of the applicator portion is symmetrically convex with an aggressive shaped curvature (52).

The use of the tool for sealant application is an intended use of the apparatus. Julien teaches the structures of the claimed invention. The preamble states a sealant tool for use in applying a sealant. This is an intended use limitation of the apparatus, see MPEP 2115, and the preamble language merely states intended use of the tool, see MPEP 2111.02 [R-3], see section II.

In regards to the symmetrically convex shape, this is a change in shape and it would have been obvious for one of ordinary skill in the art to modify the blade shape to be symmetrically convex along the entire length of the blade on both sides. It is not needed to have the blade to have the jagged edge along one edge and many blades have used blades that are symmetrical, one case would be simple blades and scrapers. In regards to the external angles and 270 degrees, there can be a range of degree to which this can encompass including on the micron level.

5. Claims 2, 3, 6, 7, 10, 11, 13, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Julien as applied to claim 1 above, and further in view of Arnett (DE 31965).

Julien fails to teach the handle and applicator from the same material and integrated and a passive curvature and that the applicator decreases linearly longitudinally. Julien does teach of the knife blank 350 having the shape of the blade and the handle prior to additional material is placed upon for ease of grip (Fig. 30).

Art Unit: 1722

Arnett teaches a tool having a handle (1) of a planar configuration, and a planar applicator portion (2) that is fixed to the handle with a free tip section (4) having a spline radius. The handle and applicator portion are the manufactured the same and are integrated. The tip having a passive shaped curvature and the handle surface appears smooth.

It would have been obvious for one of ordinary skill in the art to modify Julien with the passive curvature shape as taught by Arnett because it is a design choice in the shape of the tip. In regards to the handle and blade being of one integrated material, Arnett teaches a blade that is capable of being constructed and thus it would have been obvious for one ordinary skill in the art to modify Julien with the handle and applicator being the same material as taught by Arnett because of ease in manufacturing.

In regards to claim 6, Arnett does teach a decrease of the applicator longitudinally though not linearly. This is a change in shape for the design and have the same equivalent function as the features of Julien that one of ordinary skill in the art would recognize as being equivalent.

In regards to claims 13 and 15, these are dimensions to the tool that can be varied according to design choice. Claim 16 is also based primarily upon design and user choice since comfortable gripping is determined more upon the particular user.

6. Claim 5 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Julien as applied to claims 1 and 21 above, and further in view of Cacossa (5759590).

Julien fails to teach the construction material of the handle and the applicator.

Art Unit: 1722

Cacossa teaches that the handle can be made out of plastic, wood, metal, or the like (Col. 4, lines 22-26), and the blade structure can be made from metallic material, from plastic, or other substantially rigid material (Col. 4, lines 27-35).

It would have been obvious to one of ordinary skill in the art that the tool taught by Arnett is made from a material such as plastic or metal as these are common materials to construct tools.

7. Claims 1, 4, 6, 7, 16, 17, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Siegel (D481,269 S) in view of Hopcraft (Des 213,388).

Siegel teaches a scraper and mixing tool having a handle and elongated applicator that transition from the handle along a longitudinal axis of the handle and the applicator portion and further transitions towards a single free end with a substantial applicator portion and thickness, Siegel also teaches a convex portion of the applicator as seen via the shape of the applicator (see Drawings). Siegel fails to specifically teach a symmetrically convex portion.

In regards to the shape, the applicator can be symmetrically convex as a part of the design choice of the user. Additionally, Hopcraft teaches a symmetrical spreader and it can be seen that the applicator transitions along to a narrower point (Fig. 4).

It would have been obvious for one of ordinary skill in the art to modify Siegel with a symmetrical applicator as taught by Hopcraft, thereby allowing for design choice of an applicator that does not worry about which side it is used. Siegel and Hopcraft are both related arts in the food utensils that one of ordinary skill in the art would recognize

Art Unit: 1722

and at the time of the invention was made, would have consulted the references for information.

8. Claims 2, 3, 5, 10, 11, 13, 15, 16, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Siegel (D481,269 S) in view of Hopcraft (Des 213,388) as applied to claims 1 and 22 above, and further in view of Germany (D496,230).

Siegel in view of Hopcraft fails to teach the handle and applicator manufactured using substantially the same material.

Germany teaches an applicator that utilizes both the handle and applicator from the same material (See Figures). Thus it would have been obvious for one of ordinary skill in the art to modify Siegel with the applicator feature as taught by Germany because it allows for the scraper to be made in one piece from one molding. The applicants are put on Examiner's notice concerning the material from the applicator and handle can include plastic materials including polypropylene, nylon, polyurethane, or acetal, for use as it is well known for use of plastic materials as material component in building tools.

Response to Arguments

9. Applicant's arguments, filed 8/24/07, with respect to the rejections of the claims under Julien have been fully considered but are not persuasive. The applicator of Julien is symmetrical particularly along the tip portion and the serrations are along one edge, the general shape is symmetrical. The claimed feature concerning the external angle is

Art Unit: 1722

noted, however it can be also interpreted even on the micron level for the angle of the applicator edge. In addition, the use of the sealant tool for applying sealant is noted, however, it is merely an intended use of the apparatus that is stated in the preamble of the claim. It does not impart additional structural features upon the apparatus. This same device can be used as a food implement such as cutting a cake, or applying a spread on bread. A trowel is also another example since it is merely a handle and an applicator.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Lawrence 1490220

Eggleston Des145689

Chandler Des145685

Moody 3230566

Anaya Des278966

Overthun D488033 S

Germany D496231 S

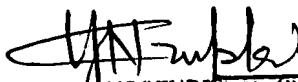
Art Unit: 1722

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emmanuel S. Luk whose telephone number is (571) 272-1134. The examiner can normally be reached on Monday-Fridays from 9 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra N. Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EL


YOGENDRA N. GUPTA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700